In the estate of Tunku Abdul Rahman Putra ibni Almarhum Sultan Abdul Hamid

HIGH COURT (SHAH ALAM) — PETITION NO 31-7 OF 1991
LOW HOP BING J
27 AUGUST 1998

Civil Procedure *— Jurisdiction — Conflict of jurisdiction between the High Court and Syariah Court — Administration of estate of a Muslim — Marriage and legitimacy of children involving Muslims — Whether matters within jurisdiction of syariah court — Whether civil court shall exercise jurisdiction*

Islamic Law *— Jurisdiction — Marriage and legitimacy of children involving Muslims — Whether within jurisdiction of Syariah Court — Whether civil court shall exercise jurisdiction*

Islamic Law *— Succession — Administration of estate of a Muslim — Whether within jurisdiction of Syariah Court — Whether civil court shall exercise jurisdiction*

The issue before the court was whether the High Court has the jurisdiction to hear and determine a dispute arising out of the administration of the estate of a Muslim and a related dispute pertaining to the validity of marriage contracted between one Chong Ah Moi alias Chong Mee Nee and the deceased, ie the late Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid.

Held:

Since jurisdiction over matters of 'probate and administration' is not conferred upon the Syariah Court, the civil court, ie the High Court, shall exercise its jurisdiction. However, the prayers relating to the validity of a marriage and the legitimacy of children involving Muslims are within the jurisdiction of the Syariah Court. In this connection, respective learned counsel for the parties in dispute had apparently achieved a consensus, ie to stay the hearing and determination of encl 52 and refer the issues of the validity of marriage and legitimacy of children to the Syariah Court (see p 628B–C).

[Bahasa Malaysia summary

Isu di hadapan mahkamah adalah sama ada Mahkamah Tinggi mempunyai bidang kuasa untuk mendengar dan menentukan pertikaian yang timbul daripada pentadbiran harta pusaka seorang Islam dan pertikaian yang berkaitan mengenai kesahan perkahwinan yang diikat di antara seorang bernama Chong Ah Moi atau Chong Mee Nee dan si mati, iaitu mendiang Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid.

Diputuskan:

Oleh kerana bidang kuasa atas perkara-perkara 'probet dan pentadbiran' tidak dikurniakan ke atas Mahkamah Syariah, mahkamah sivil, iaitu Mahkamah Tinggi, hendaklah melaksanakan bidang kuasanya. Walau bagaimanapun, permohonan berhubung dengan kesahan suatu perkahwinan dan kesahan anak-anak yang melibatkan penganut Islam adalah dalam bidang kuasa Mahkamah Syariah. Sehubungan dengan itu, peguam terpelajar untuk pihak yang bertikai masing-masing nampaknya telah mencapai sepersetujuan, iaitu untuk menggantung pembicaraan dan penentuan lampiran 52 dan merujuk isu-isu mengenai kesahan perkahwinan dan kesahan anak-anak kepada Mahkamah Syariah (lihat ms 628B–C).]

Notes

For a case on conflict of jurisdiction between the High Court and syariah court, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2858.

For cases on jurisdiction and succession under Islamic law, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 257–291 and 444–456.

Cases referred to

Barkath Ali Abu Backer v Anwar Kabir Abu Backer & Ors [1997] 4 MLJ 389 (refd)

Jumaaton dan Satu lagi v Raja Hizaruddin [1998] 6 MLJ 556 (refd)

Lim Chan Seng v Pengarah Jabatan Agama Islam Pulau Pinang [1996] 3 CLJ 231 (refd)

Mohamed Habibullah bin Mahmood v Faridah bte Dato' Talib [1992] 2 MLJ 793 (refd)

Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan [1998] 1 MLJ 681 (refd)

Ng Wan Chan v Majlis Agama Islam Wilayah Persekutuan (No 2) [1991] 3 MLJ 487 (refd)

Shaik Zolkaffily bin Shaik Natar & Ors (sued as trustees of the estate of Sheik Eusoff bin Sheik Latiff, deceased) v Majlis Agama Islam Pulau Pinang dan Seberang Perai [1997] 3 MLJ 281 (refd)

Legislation referred to

Administration of Islamic Law (Selangor) Enactment 1989 s 42(2)(b)

Administration of Islamic Religious Affairs (Penang) Enactment 1993 s 48 (2)(b)

Adoption Act 1952 s 31

Courts of Judicature Act 1964 s 24(f)

Distribution Act 1958 s 2

Federal Constitution arts 74(2), 121

Probate and Administration Act 1959 ss 52, 59

A Rules of the High Court 1980 O 20 r 5, O 71 r 36(1), O 72
Wills Act 1959 s 2(2)

Rosli Dahlan (*Chan Kheng Hoe* with him) (*Allen & Gledhill*) for the first and second petitioners.

B *Mubashir Mansor* (*Anisah Low* with him) (*Skrine & Co*) for the third petitioner.

Cur Adv Vult

C **Low Hop Bing J**:

Issue for determination

The issue which arises for determination in relation to encl 52 is whether, upon a proper construction of the relevant provisions of the Federal
D Constitution, the Courts of Judicature Act 1964, the Probate and Administration Act 1959 and O 71 of the Rules of the High Court 1980, this court has the jurisdiction to hear and determine a dispute arising out of the administration of the estate of a Muslim and a related dispute pertaining to the validity of marriage contracted between one Chong Ah
E Moi alias Chong Mee Nee and the deceased, ie the late Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid.

Submission for the joint administrators

Learned counsel for the joint administrators submitted that the proceedings
F herein are under the Probate and Administration Act 1959 and O 71 of the Rules of the High Court and so this court has the jurisdiction to hear and determine the dispute as described above.

Submission for the third petitioner

G Learned counsel for the third petitioner contends that although the prayers in encl 52 prima facie relates to the administration of the estate of a Muslim, there is a related dispute in relation to the validity of the marriage between one Chong Ah Moi alias Chong Mee Nee and the late Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid.

H

Decision of the court

Prayers sought in encl 52

I The summons in chambers dated 5 August 1997 (encl 52) filed by the joint administrators is for the following orders:

(a) that the letters of administration to administer the estate of the late Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid dated 4 September 1991 be revoked pursuant to O 71 r 36(1);

(b) that the petition dated 16 January 1991 be amended pursuant to O 20 r 5 read together with r 7, as the amended petition; and

(c) the applicants named herein be given leave to obtain new letters of administration based on the amended petition.

Prima facie, these prayers come properly within the broad ambit of probate and administration of estates.

The above prayers in encl 52 also give rise to a related dispute in relation to the validity of the marriage contracted between one Chong Ah Moi alias Chong Mee Nee and the late Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid and consequently the legitimacy of one of the products of the said marriage, ie the third petitioner.

Jurisdiction of High Court and jurisdiction of syariah court

Article 121 of the Federal Constitution establishes the jurisdiction of our High Court to the extent as may be conferred by or under Federal law enacted pursuant to the Ninth Schedule, List I — Federal List. Paragraph 4(e)(i) of the said Federal List includes the power of Parliament to legislate for the Federation in respect of, inter alia, matters of 'probate and administration'. There are, in fact, express provisions which have been enacted by Parliament, thereby conferring upon the High Court jurisdiction in respect of matters of 'probate and administration' (see s 24(f) Courts of Judicature Act 1964). The predominant position of the provisions in the Courts of Judicature Act 1964, vis-a-vis other ordinary Acts of Parliament or written law, other than the Federal Constitution, is reflected in s 4 of the Courts of Judicature Act 1964 which provides that in the event of inconsistency or conflict between the Courts of Judicature Act 1964 and any other written law other than the Federal Constitution, the Courts of Judicature Act 1964 shall prevail. Hence, the Courts of Judicature Act 1964 shall take precedence over every other statute or written law save and except the Federal Constitution.

Parliament has also, in her wisdom, enacted the Probate and Administration Act 1959 to deal with matters relating to probate and administration. This Act is an Act of general application to both Muslims and non-Muslims alike, as opposed to other statutes which have a clause limiting its application to non-Muslims, eg see s 2(2) Wills Act 1959; s 2 Distribution Act 1958; s 31 Adoption Act 1952. See also G Raman, *Probate and Administration in Singapore and Malaysia: Law and Practice* (Singapore: Malayan Law Journal Pte Ltd (1991)) at p 5.

Rules of procedure have also been enacted in order to enable the High Court to deal with matters of 'probate and administration', eg O 71 and O 72, Rules of the High Court 1980, and specifically O 71 r 36(1) thereof.

In my judgment, our High Court is empowered to deal with matters of 'probate and administration' involving estates of Muslims. Jurisdiction over matters of 'probate and administration' is also exercised by our High Court in respect of, eg:

A (1) re-sealing of grants from abroad (even of Muslims) must be by the High Court: s 52 Probate and Administration Act 1959; and

(2) for grant issued locally and re-sealed abroad, notice will be given to the High Court which also bears the responsibility of notifying the court re-sealing the grant should there be any alteration or revocation of the same: s 59 Probate and Administration Act 1959.

B

In any event, the Syariah Appeal Board of the Federal Territory Syariah Court has recently (on 8 July 1998) held that it is the High Court which should exercise jurisdiction over matters or 'probate and administration' of Muslim estates: *Jumaaton dan Satu lagi v Raja Hizaruddin* [1998] 6 MLJ 556.

C

The action before this court flows from a petition for letters of administration and is an application for an order to revoke the grant, amend the petition and re-issue a fresh grant of Letters of Administration. Since encl 52 clearly concerns matters of 'probate and administration', it is within the jurisdiction of this court. Our High Court has jurisdiction over any matter that does not fall within the jurisdiction of the Syariah Court: *Shaik Zolkaffily bin Shaik Natar & Ors (sued as trustees of the estate of Shaik Eusoff bin Sheik Latiff, deceased) v Majlis Agama Islam Pulau Pinang dan Seberang Perai* [1997] 3 MLJ 281.

D

Conversely, our High Court has no jurisdiction over any matter that falls within the jurisdiction of the Syariah Court: art 121(1A) Federal Constitution; *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 793 (SC).

E

It is for the respective state legislatures to legislate on the jurisdiction of the Syariah Court for a particular state: art 74(2) Federal Constitution; Ninth Schedule, List II — State List, para 1.

F

In the event that a state legislatures does not exercise its powers to so legislate, there is no impediment for the civil High Court to exercise jurisdiction: *Lim Chan Seng v Pengarah Jabatan Agama Islam Pulau Pinang* [1996] 3 CLJ 231; *Barkath Ali Abu Backer v Anwar Kabir Abu Backer & Ors* [1997] 4 MLJ 389.

G

The civil jurisdiction of the Syariah Court, as set out under various State Enactments, does not include such matters as 'probate and administration' (see s 42(2)(b) Administration of Islamic Law (Selangor) Enactment 1989; s 48(2)(b) Administration of Islamic Religious Affairs (Penang) Enactment 1993). Jurisdiction conferred upon a Syariah Court is by way of an express provision, and not by implication: *Shaik Zolkaffily bin Shaik Natar*; *Ng Wan Chan v Majlis Agama Islam Wilayah Persekutuan (No 2)* [1991] 3 MLJ 487; *Barkath Ali Abu Baker*.

H

Although Abdul Kadir Sulaiman J in *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan* [1998] 1 MLJ 681 held, inter alia, that the Syariah Court has jurisdiction over persons professing the religion of Islam in respect of any matter included in para 1 of List II — State List, Ninth Schedule to the Federal Constitution, the Syariah Court would, in my view, have no jurisdiction over matters of 'probate and administration'

I

affecting a person professing the religion of Islam because the said paragraph does not include 'probate and administration', even if the jurisdiction of the Syariah Court is given the widest possible interpretation.

Since jurisdiction over matters of 'probate and administration' is not conferred upon the Syariah Court, our civil court, ie the High Court shall exercise its jurisdiction: *Shaik Zolkaffily bin Shaik Natar.* However, as I have stated above, the prayers sought in encl 52 are also related to the validity of a marriage and the legitimacy of children, involving Muslims. These two disputed areas are within the jurisdiction of the syariah court. I therefore have to consider the most practical approach and solution to the hearing and determination of encl 52. In this connection, respective learned counsel for the parties in dispute, viz the joint administrators and the third petitioner, have apparently achieved a consensus, ie to stay the hearing and determination of encl 52 and refer the issues of the validity of marriage and legitimacy of children to the Syariah Court.

Conclusion

On the foregoing grounds, I hold that this court has the jurisdiction to hear and determine the matter relating to probate and administration in encl 52. Further, by reason of the apparent consensus of the respective learned counsel for the parties, I hereby order a stay of these proceedings and direct all parties herein to refer to the Syariah Court for a final and conclusive determination in relation to the issues relating to the validity of marriage and the legitimacy of children. Costs in the cause.

Order accordingly.

Reported by Loo Lai Mee